

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PATRICIA VANNER,

Plaintiff,

vs.

Case No. 09-CV-12082  
HON. GEORGE CARAM STEEH

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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ORDER ACCEPTING REPORT AND RECOMMENDATION (# 35), DENYING  
DEFENDANT'S MOTION TO STRIKE (# 28), AND DENYING AS MOOT  
PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S MOTION (# 32)

In this case, plaintiff Patricia Vanner sought review of the decision denying her application for social security disability benefits. On September 28, 2010, the court remanded the action for further development of the record. On December 28, 2010, plaintiff filed a motion for attorney fees under the Equal Justice Act. On January 25, 2011, defendant filed a motion to strike plaintiff's motion for attorney fees under the Equal Justice Act. Defendant argues plaintiff's request for attorney fees should be denied because plaintiff was not represented by a properly admitted attorney as plaintiff's counsel was not an active member of the state bar of Michigan and did not specify local counsel. Plaintiff responded to defendant's motion to strike and defendant filed a reply in support of the motion. On February 22, 2011, plaintiff filed a motion to dismiss, as moot, defendant's motion to strike because local counsel for plaintiff filed an appearance on February 9, 2011. Defendant responded to the motion. On February

23, 2011, Magistrate Judge Morgan issued a report and recommendation suggesting defendant's motion to strike be denied. In the report, Magistrate Judge Morgan notes: (1) defendant failed to cite any cases in which a court denied attorney fees under the EAJA on the basis that plaintiff was not represented by local counsel; (2) defendant waited until almost two years of litigation had taken place before raising the local counsel issue; and (3) EAJA fees are payable to plaintiff, not to counsel, thereby undermining the significance of the local counsel argument in this context. The objection deadline of March 14, 2011 has passed and no objections were filed. For the reasons set forth in Magistrate Judge Morgan's well-reasoned report and recommendation, the report and recommendation (#35) is ACCEPTED and ADOPTED and defendant's motion to strike (#28) is DENIED. Defendant is ordered to file a response to plaintiff's request for attorney fees by March 31, 2011. Plaintiff's motion to dismiss defendant's motion is DENIED as moot.

SO ORDERED.

Dated: March 15, 2011

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 15, 2011, by electronic and/or ordinary mail.

s/Marcia Beauchemin  
Deputy Clerk